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10/066,874	02/04/2002	Hans-Joachim Timpe	A34880-065838.0325	4791

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EXAMINER

GILLIAM, BARBARA LEE

ART UNIT	PAPER NUMBER
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1752

DATE MAILED: 10/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/977,664

Applicant(s)

HERPST, ROBERT D.

Examiner

Lyle A Alexander

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) ☐ Other: \_\_\_\_

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***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-9,12,15-19,25,27-31,34-44 and 46-47 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Brown (USP 6,037,168).

Brown teaches a microbiological assembly (20) having a support (22) and a cover (30) attached in a hinged relationship. Columns 7-9 teach pressure sensitive adhesives or magnetic closure mechanism can be used to close the cover. The cover is taught as being made of a transparent glass material (see col. 12 lines 36+). Column 9 lines 46+ teach use of different materials including cellulose.

Claims 1-7, 15-19, 15, 26-31, 34-37, 39-44 and 46-47 rejected under 35 U.S.C. 102(b) as being clearly anticipated by Chandler. (USP 5,869,345) or Bogart et al. (USP 5,468,606).

Chandler teaches a device (10) having a first opposable component (12) and a second opposable component (14) connected to each other by a hinge (30). There is a first window (40) and (38) are in the first and second components (12) and (14) respectively. Adhesive (16) is taught for securing the first and second components together.

Bogart et al. teach in figure 8 a device (20) having a hinge (30) that connects upper half (32) and lower half (34). There are apertures/windows that permit the automated analysis of the sample.

Claims 1-2, 4, 15-19, 25-31, 34-37, 39-44 and 46-47 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Jacobson et al. (USP4, 260,687).

Jacobson et al. teach a diagnostic device for measuring biological characteristics of microorganisms that includes bacterial colonies. A device (10) has a plurality of interconnecting chambers and a hinged cover (19) that folds over the device (10).

Claims 1-7, 15-19, 25-31, 34-37, 39-44 and 46-47 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Shields et al. (USP 6,033,627).

Shields et al. teach a device (20) having a front panel (22) and bottom panel (24) joined by a hinge (26). Column 1 lines 10+ teach it is known to use adhesive, including pressure sensitive adhesives, to secure a cover panel shut Cellulose is taught as material of construction.

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Claims 1-2,4-7,15-16, 18-19, 25-31, 39-40 and 46-47 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Ozbey et al. (USP 6,186,403).

Ozbey et al. teach a sample holder and method of using it in combination with a spectrometer. Figures 1-4 teach the holder as a rectangular card having a fold line equidistant from either end permitting the card to be folded in half to secure a sample therein. There is a window(116) through the card formed by the folding. Column 5 teaches adhesive strips(108,120) and pressure sensitive adhesive(110) that surrounds the window(116) that has been read on the claimed adhesive. Figure 13 teaches a "plate window"(406) in combination with a recess(404) that has been read on the multiple windows. Additionally, figure 13 shows a sliding relationship between window (406) and the recess (404).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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Claims 10-11,13-14,20-24, 32-33 and 48-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobson et al., Shields et al., Chandler, Bogart et al. or Brown.

See Jacobson et al. Shields et al. Chandler, Bogart et al. and Brown supra.

The art is silent to the claimed materials of construction of the glass, specifically the alkali halide such as potassium bromide/chloride and sodium chloride.

The court decided In re Leshin (125 USPQ 416) that selection of a material based upon its suitability of intended use would have been within the skill of the art in view of 35 USC 103.

Alkali halide crystal materials comprising potassium bromide/chloride or sodium chloride are well known in the art and advantageous because of their low cost, excellent optical properties and hardness.

It would have been within the skill of the art to modify Brown and use an alkali halide crystal materials comprising potassium bromide/chloride or sodium chloride to gain the above advantages and in view of Leshin because selection a material based upon its suitability of intended use.

Claims 8-9 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ozbey et al., Jacobson et al. Shields et al. Chandler or Bogart et al. in view of Brown (USP 6,037,168).

See Ozbey et al., Jacobson et al., Shields et al., Chandler and Bogart et al. supra.

These references are all silent to the use of magnetic closure means.

Brown teaches in column 7-9 that pressure sensitive adhesives or magnetic closure mechanism can be used to close the cover. Brown teaches the interchangeability pressure sensitive adhesive and a magnetic closure mechanism. A magnetic closure mechanism is advantageous over adhesive because it does not degrade in the tenacity of hold with successive uses, works in wet environments and is less sensitive to degradation by heat.

It would have been within the skill of the art to modify Jacobson et al. Shields et al. Chandler or Bogart et al. in view of Brown (USP 6,037,168) and use a magnetic closure mechanism to gain the above advantages.

Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ozbey et al., Jacobson et al. Shields et al. Chandler, Bogart et al. or Brown in view of Marker et al. (4,855,110)

See Ozbey et al., Jacobson et al. Shields et al. Chandler, Bogart et al. and Brown supra.

These references are silent to the use of a carousel for containing the slide to interface with an analyzer.

Marker et al. teach the use of a carousel in an automated analyzer. The carousel has the advantages of providing immediate access to all of the samples, which enables "stat" analysis of an important sample. Automated analyzers have the additional advantages of reducing human error, lower labor costs and permit 24/7 operations.

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It would have been within the skill of the art to modify Ozbey et al., Jacobson et al. Shields et al. Chandler, Bogart et al. or Brown in view of Marker et al. and use a carousel engaged with an automated analyzer to gain the above advantages.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A Alexander whose telephone number is 703-308-3893. The examiner can normally be reached on Monday, Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 703-308-4037. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.



Lyle A Alexander  
Primary Examiner  
Art Unit 1743

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